

REMARKS

This Response and Amendment is in response to the September 14, 2007 Office Action (“Office Action”). Claims 3 and 39-42 are canceled in this response. Claims 4-41 are pending.

Claim 38 has been amended. Support for the amendment to claim 38 is found at pages 21-23. Specifically, support is found in Tables 1, 2 and 4. Support is also found at page 6, paragraph 4 to page 7, first paragraph.

RELATED CASES

Pursuant to 37 CFR §1.56, Applicant and Applicant’s attorney hereby make of record in the above-identified patent application the existence of the following commonly owned co-pending patent applications that are related to the above-identified patent application:

U.S. Patent Application Serial No. 10/177,445 filed June 21, 2002, entitled Antimicrobial Compositions, Products and Methods Employing Same and U.S. Patent Application Serial No. 10/263,211 filed October 2, 2002, entitled Antimicrobial Compositions and Methods of Reducing Inflammation by Applying a Composition.

Applicants respectfully request that the Examiner to review the claims and the prosecution history, including any Office Actions issued by the U.S. Patent and Trademark Office, for pending U.S. Patent Application Serial No. 10/263,211 and 10/600,180 since the specifications include common subject matter.

CLAIM REJECTIONS

In the present Office Action, claims 3-41 stand rejected under 35 U.S.C. § 102(b) as anticipated by U.S. Pat. No. 6,190,675 to Beerse, et al. (“Beerse”). In addition, claims 3-41 also stand rejected under 35 U.S.C. § 103(a) as obvious over Beerse.

1. The Rejection of Claims 3-42 Under 35 U.S.C. § 102(b) as Anticipated by Beerse.

Claims 3-42 stand rejected under 35 U.S.C. § 102(b). Claims 3 and 39-42 are canceled in this response, so the rejection of claims 3 and 39-42 is moot. However as amended, pending claims 4-38 are not anticipated by Beerse. “A rejection for anticipation under section 102 requires that each and every limitation of the claimed

invention be disclosed in a single prior art reference." *In re Paulsen*, 30 F.3d 1475, 1478-79, 31 USPQ2d 1671 (Fed. Cir. 1994).

In this case, amended claim 38 and the claims depending therefrom, require that the composition does not contain an antimicrobial active. In contrast, Beerse discloses antimicrobial formulations that contain an antimicrobial active. Beerse is directed to "rinse-off antimicrobial cleansing composition comprising from about 0.001% to about 5% of an antimicrobial active; from about 1% to about 80% of an anionic surfactant; from about 0.1% to about 12% of a proton donating agent; and from about 3% to about 98.899% of water; wherein the composition is adjusted to a pH of from about 3.0 to about 6.0; wherein the rinse-off antimicrobial cleansing composition has a Gram Positive Residual Effectiveness Index of greater than about 1.8; and wherein the rinse-off antimicrobial cleansing composition has a Mildness Index of greater than 0.3." Beerse at column 2, line 65 to column 3, line 6 (Summary of the Invention). Beerse requires antimicrobial actives. Therefore, since Beerse requires an antimicrobial active, and the claims specifically do not contain an antimicrobial active, the claims are not anticipated.

In addition, as amended, the claims require a calcium scavenger such as citric acid or succinic acid, in addition to a specific kind of anionic surfactant or surfactants. Beerse does not teach compositions including the specified calcium ion scavengers and the specific kind of anionic surfactant claimed. Although Beerse does list certain acids and presents examples including citric acid, Beerse does not enable compositions containing the specified organic acids in combination with the specific calcium ion scavengers and claimed anionic surfactants without undue experimentation.

In order to anticipate, a prior art reference must be enabling, thus placing the allegedly disclosed matter in the possession of the public. *Akzo N.V. v. United States ITC*, 808 F.2d 1471, 1 USPQ2d 1241 (Fed. Cir. 1986). The reference must describe the applicant's claimed invention sufficiently to have placed a person of ordinary skill in the field of the invention in possession of it. *In re Spada*, 911 F.2d 705, 15 USPQ2d 1655 (Fed. Cir. 1990). Thus, an anticipating reference must describe all of the elements and limitations of the claim in a single reference, and enable one of skill in the field of the invention to make and use the claimed invention. *Merck & Co. v. Teva Pharm. USA Inc.*, 347 F.3d 1367, 68 USPQ2d 1857, 1861 (Fed. Cir. 2003). A reference is enabled when its

disclosures are sufficient to allow one of skill in the art to make and use the claimed invention, but such experimentation must not be "undue." *Amgen Inc. v. Hoechst Marion Roussel Inc.*, 457 F.3d 1293, 79 USPQ2d 1705, 1714-15 (Fed. Cir. 2006).

In this case, as discussed above, Beerse does not disclose compositions that do not contain an antimicrobial active. Furthermore, regardless of the antimicrobial active limitation, Beerse does not teach the combination of elements required in the pending claims without undue experimentation. Therefore, Beerse is not enabled and cannot anticipate the pending claims. Beerse provides only a relatively small number of examples, columns 29-34, vast lists of possible ingredients, columns 5-21, and minimal teaching. None of the teaching would lead to the selection and combination of the specifically claimed components in the pending claims.

The surfactants of Beerse are described as having wide ranges of permissible chain lengths, most of which are outside the claimed ranges of the pending claims. The inordinate number of combinations of possible from the ingredients of Beerse allow literally millions of combinations, all of which would result in compositions that are outside of the pending claims because they require an antimicrobial active, and virtually all of which are outside of the pending claims because of improper surfactants, incorrect acids, or missing elements, regardless. Thus, the amount of experimentation based on Beerse would be undue to arrive at the claimed compositions, and Beerse is not enabled with respect to the claimed compositions. Therefore, in light of the foregoing, Beerse cannot anticipate the pending claims. Applicants respectfully request that this rejection be withdrawn.

2. The Rejection of Claims 3-42 Under 35 U.S.C. § 103(a) as Obvious in View of Beerse.

Claims 3-42 stand rejected under 35 U.S.C. § 103(a). However, as amended, claims 4-38 are not obvious in view of Beerse. When the prior art fails to teach or suggest each and every element of a claimed invention, the invention is non-obvious. See MPEP § 2143.03. As discussed above, Beerse does not teach or suggest each and every element of the claimed invention because Beerse does not teach or suggest antimicrobial compositions that do not contain an antimicrobial active. In addition, as evidence of non-obviousness, Applicants herewith submit the Declaration of Dr. Michael Lynch. The

Declaration provides evidence that one of ordinary skill in the art would not have been enabled by Beerse to make the claimed compositions. Furthermore, the Declaration provides evidence of unexpected results. For example, Dr. Lynch cites the information in Table 4 as unexpected.

TABLE 4-EFFICACY OF COMPOSITIONS

Liquid Composition	E. coli Log reduction Time Kill (1 min); solution & wipe	E. coli Log Reduction Immediate: Vitro skin	E. coli Log Reduction Residual: Vitro skin	Rotavirus Log Reduction Immediate: Vitro skin	Rotavirus Log Reduction Residual: Bio skin
EX 1	5	4	4	3	
EX 3	5	5	5	3	3
EX 4		3	3		
EX 7		4	4		
EX 8		4	5		
EX 9		4	4		
EX 10		3	4		
EX 11	5	3	4	2	

Declaration at numbered paragraph 11. Moreover, Dr. Lynch describes particularly that the antimicrobial performance versus Rotavirus is unexpected. Declaration at numbered paragraph 12. In addition, Dr. Lynch describes the failure of others to achieve such antimicrobial performance. Declaration at numbered paragraph 14.

Accordingly, Applicants respectfully request that the Examiner withdraw the rejection under 35 U.S.C. § 103(a) and allow claims 4-38.

CONCLUSION

Applicants believe that Claims 4-38 are patentable. In view of the foregoing, Applicants respectfully request reconsideration of this application, entry of the amendments presented herein, and allowance of claims 4-38.

Respectfully submitted,


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